1952

File No. O. Misc/52
Pt. I & II
Legal Department
A BRANCH

K

A/3/7

Subject:—

Opinions - Miscellaneous

— given in the year 1952

(Part II has been combined with Part I)

1952

File No. O. Misc./52
Pt I & II

Gen. 194

1.3-A

C O N T E N T S.

Legal Department File No. C. Misc./32-Pt.I & II.

Sr. No.	L.D./C. No.	Subject	Pages.
		Miscellaneous opinions given in the year 1932.	
1.	31-C/32fl., 9-1-32.	Re: Circular issued by the General Secy. of the C.J.D. Staff Association which is alledged to be of defamatory character. Question whether Govt. can take any action in this respect.	1-2.
2.	775/15-1-32	Re: Transfer of the control of the C. D. High School to the Vinayak Municipality.	3-4
3.	146-Conf/1. 6-2-32.	Re: Transfer of the Vaidic School, Kolhapur to the control and management of the Bhakti Education Society, Kolhapur.	5-6
4.	1943/6-2-32.	Question whether the letter addressed to the Sub-Judge by the Civil Judge asking him not to proceed with the suit instituted in his court, is in the nature of an injunction order and if so whether the civil judge is competent to do so.	7-8
5.	2315/12-2-32.	Re: Construction of church on Municipal land. Whether Govt. has power to interfere with the construction.	9-10
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7.	4230/19-3-32.	Re: Filing of a suit against the Maharaj Kumar of Dharampur for the recovery of some dues on account of the rent of the Godown. Question whether, when the Maharaj Kumar has since died in a suit can be filed against his heirs.	13-14.
	5373/20-4-32.	Whether if the Bombay Millowners' Association had once lost the right to elect two members, the same could be revived now.	15-16

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24.	16577/9-10-52	Question whether in view of the fact that a person is serving a sentence under Sec. 304(1) I.P.C. Govt would be justified in surrendering him to Pakistan Govt. authorities.	59-60.
25.	1637/11-10-52	Re: Proposal to frame rules for appointing licensed petition writers for Criminal Courts and to fix fees to be charged by them.	61-64
26.	17063/10-10-52.	Baroda State (Application of Laws) Order— Clauses 3 & 6. Baroda Account Code, Section 237. Re: Succession certificate obtained for getting sums which were lying in Baroda Court as lapsed Deposits	65-69
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28.	20374/6-12-52	Question regarding possibilities of recovering the cost of the stolen lead which was melted and used in Ghotki Iron Works, Hasik.	71-74
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30.	19404/20-11-42.	Re: Discouraging the use of guides, etc. in schools. Request from a certain Publishing House to the Director of Education to allow them to sell the stock of guide-books etc., already in hand so that they may not sustain loss. Refusal of the above request by the Director. Question whether, if the Managing Agents of the Publishing House approach the court of law for the redress, the suit would be definable.	70-00.

LAE/15-6.
5 c.

Legal Department.

The communique issued by Shri D.N.Naik (p.5 ante) has been issued by him in his capacity as General Secretary of the Civil Supplies Department Staff Association; and Government is not in any way responsible for the contents thereof; nor is there any reference therein to suggest that the same has been issued in consultation with or under the authority of Government. If as stated by Shri Bhatt the communique contains matter of a defamatory character, it would be open to his client to go to a Court of Law. Government is not bound either to take any action against Shri Naik or to issue any press note disapproving the same. In the circumstances the Civil Supplies Department may inform Shri Bhatt that Government is in no way responsible for the statements made in the communique and does not consider it necessary to take any action as suggested by him.

Id/- J.R.B. 8/1

Additional Secretary to Government.

U.O. to C.S.D. No.31-Confl., dated the 8th January 1952.

KAN/15-6.
4 c.

Office of the R.L.A.

It appears necessary to insert a condition (g-1) that the school should continue to bear the name of Sheth Gokhalbhai Dolatram High School. Subject to this the draft Government resolution appears to be in order.

Id/- P.M.L. 17/1

Remembrancer of Legal Affairs.

U.R. to E.D., No. 775, dated the 18th January 1952.

KAE/15-6.
I C.

Office of the A.G.A.

It does not appear that the decision of the issue whether the charge of rupees five thousand imposed upon the Math property is or is not valid has anything to do with the transfer of the management of the Vaidic School to the Shabu Education Society. Nor would the transfer affect the right to the charge of R.5,000/- if in the pending appeals the High Court holds that the charge is valid. There does not, therefore, appear any objection to effecting such transfer as proposed by the Director of Education.

Id/- P.M.L. 6/2

Remembrancer of Legal Affairs.

U.R. to E.D. , No.146-Confl., dated the 6th February 1952.

EAN/15-6.
4 c.

Office of the R.L.A.

In writing to the Mamlatdar to stay, the proceedings in his court the Civil Judge could not have intended it as an order to be obeyed by the Mamlatdar, for obviously he must be aware that he could not issue any such order. It is open to the Mamlatdar to decide whether he should or should not await the Civil Court's decision. In the circumstances this is not a matter worthy of being brought to the notice of the High Court. However, before this matter is dropped, Government may ask the Mamlatdar to write to the Civil Judge inquiring whether his letter dated 23-7-1951 should be treated as an injunction or treated as merely advisory.

Id/- P.M.L. 5/2

Remembrancer of Legal Affairs.

U.R. to H.D., No.1963, dated the 6th February 1952.

KAM/15-6.
4 c.

Office of the R.L.A.

The view taken by Dy. Secy., R.D., in his note dated 11-2-1952, is correct. The land over which the church is constructed being municipal land Government has no power to interfere with the construction thereof on that land.

Id/- P.M.L. 13/2

Remembrancer of Legal Affairs.

U.O. to R.D., No.2345, dated the 13th February 1952.

RAM/15-6.
4 c.

Office of the R.L.A.

Termination of Shri Kenkare's services.

Orders issued in G.A., S.D.No.6093, dated the 14th April 1947 are not applicable to Shri Kenkare's case as he did not serve for the major part of the second term. Moreover the assurance given to him by the Principal, Shri Correia Afonso, appears to be unauthorised because even according to the G.R. a member who has served for the major part of the second term is to be paid upto the 31st March and not for the vacation period. That promise is, therefore, not binding on Government and a suit, if filed, will be defensible. However, as the service was suddenly terminated Government may consider whether it would nto be desirable to pay notice salary for one month and compromise the matter.

Sd/- P.M.L. 14/3

Remembrancer of Legal Affairs.

U.R. to S.D. No.1036, datedthe 15 th March, 1952.

KAN/15-6.
4 c.

Office of the R.L.A.

A suit can be filed against the heirs of the deceased and they will be liable to the extent of the property of the deceased which has come to their hands and has not been duly disposed of (vide Agarwala's Pleadings in India, pages 238-239). However, from the copy of the extract of the accounts at page 9 ante, it appears that the debt is of the year 1945-46 and ordinarily, it would be time-barred unless the period of limitation has been extended by any acknowledgment on the part of the late Maharaj Kumar or on any other ground.

Sd/- P.M.L. , 19/3.
Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 4239, dated the 19th March 1952.

KAN/15-6.
4 c.

Office of the R.L.A.

The question that arises for consideration is whether if the Bombay Millowners' Association had once lost the right to elect two members, the same could be revived now. The Rules and Regulations of the V.J.T. Institute do not provide for the extinguishment of the Association's right except by deletion of the relevant provision on a special resolution of the Board. When the Association failed to contribute the specified yearly amount it was open to the Board to insist upon full contribution and in default to delete the provision in Rule 2 conferring the right of nomination on the Association. The failure on the part of the Board to do so amounts to waiver and it would not be open to the Board to challenge the Association's right at this stage particularly when the Board has been receiving Rs.2500/- per year since 1917 onwards. There would, therefore, be no objection to accepting the proposal made by the Director ofTechnical Education.

Id/- P.H.L. 9/4

Remembrancer of Legal Affairs.

U.R. to E.D., No.5378, dated the 10th April 1952.

KAH/15-6.
4 c.

Office of the R.L.A.

The draft G.R. is in order. The old lady who occupied Government premises without the permission of the Port Officer is a trespasser, and that being the case, she can be evicted without notice and without resource to a Court of law. A trespasser having no juridical possession would not be entitled to sue under section 9 of the Specific Relief Act; even otherwise no suit against the State Government can lie. For wilful trespass she can also be prosecuted under section 120 of the Bombay Police Act, 1951.

It is not clear whether the occupation of the Government quarters by Shri Thakershi Ratna as a Sukani was subservient and necessary to the service, or whether he was permitted to occupy Government quarters. It cannot, therefore, be definitely stated that his occupation can be treated as the occupation by a servant and not by a tenant. It is, therefore, safer that possession should be taken by due process of law rather than by force.

Id/- P.H.L. 10/4

Remembrancer of Legal Affairs.

U.R. to P.W.D. No.5158, dated the 12th April 1952.

RAH/15-6.
4 c.

4523 dt. 4-8-33.

Submitted.

The Vadi Estate consisting of eight villages was under the management of the Rajpipla State before merger as the Vasava Thakor was minor. After merger of Rajpipla with Broach District the management of the Estate was continued by the Administrator. There was a balance of Rs.1,19,734/- in the Personal Deposit Account of the Estate. The Estate was a foudatory of the Rajpipla State. The Thakor was paid a maintenance allowance of Rs.275/- per month and a Khanti compensation of Rs.2000/- per annum. By their letter dt. 14.3.51 (p.37 ante) Govt. ordered the continuance of payment of both the allowance and the compensation for the life time of the Thakor. It was further ordered that the balance of Rs.1,79,734/- should be credited to the Revenue account of this Govt. The Accountant General in his letter at p. 47 ante has raised the question whether Govt. have satisfied themselves that there would be no legal difficulties in crediting the amounts of the balance and of the income that may be derived from the villages in future to the revenue account of Govt. The R.L.A. is requested to advise.

R.L.A. Id/- P.M.L. 19/4

K/M/15-6.
4 8.

Office of the R.L.A.

It appears that the accumulated balance of Rs.~~1,26,~~ 1,26,233 in the P.D. Accounts consisted of the revenue of the Vadi Estate. The Collector states that the balance of Rs.1,26,233 in the P.D. Account of the estate is included in the pre-integrated account of the state (p.55 ante). As the Vadi Estate in not contained as a separate entity, there would be no objection to crediting the accumulated balance of Rs.1,26,233 to Government account. The future revenue derived from the villages can also be credited to Government account.

Id/- P.M.L. 21/4

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No.6099, dated the 22nd April 1958.

KAH/15-6.
4 c.

Legal Department.

Submitted with reference to the P.W.D. office notes on pp.7-8 ante.

2. The facts of the case have been stated in the letter of the Collr. of Sholapur, dated the 22nd December 1951.

It appears that in September 1947 the Mamlatdar Khandali on the application of the villagers of Patwardhan Kuroli village in the Khandali Taluka of the then Miraj State sold a ferry boat to one Shri M.A.Sevakar of Pandharpur for Rs.1,500 and the amount was credited in the Khandali Sub-Treasury on 30th Sept. 1947. The ferry boat was constructed from contribution raised by the villagers; and it appears that they wanted the sale proceeds of the boat to be utilised for the repairs of Maruti and Vithoba temples and a Dharam Sanghshala in the villages; and it was with this understanding that the boat was sold. According to Shri Sevakar the possession of the boat was handed over to him on 15-10-47, but when he wanted to remove it from Kuroli to Pandharpur on 10-10-48 after effecting certain repairs, the villagers objected to the removal. Shri Sevakar thereafter asked for police help for removal of the boat. As this proved fruitless, on 28-7-50 he gave a notice of suit claiming Rs.1,5000, the sale price, plus Rs.622 and odd spent by him on repairs and for interest. The suit was ultimately filed in the court of the Jt. Civil Judge, Pandharpur; but the court has returned the plaint for filing in the proper court. The Collr. of Sholapur who in the meantime conducted an inquiry into the matter

in his report dated the 22nd December 1951 has stated that in absence of clear evidence on record, possession of the boat cannot be said to have been handed over to Shri Savakar and therefore the repairs effected by him would be unauthorised. He, therefore, proposes to repudiate claims to repairs, etc., and has sought Govt. sanction for the refund of the amount of Rs.1,5000 credited on 30-9-47. The R.L.A. is requested to advise whether the Collr's proposal is legally feasible.

KAN/18-6.
1 c.

Office of the R.L.A.

Sale of Ferry Boat at Kurali.

In view of the evidence on record, it cannot be contended that a sale was not concluded and possession of the boat was not handed over to Shri Savaker. The only course left open is that the Collector should exercise his good offices in persuading Shri Savakar to give up his claim and to accept refund of Rs. 1,500. Shri Savakar can have no cause of action against the Government. The suit, if filed against the Government will be defeasible.

Id/- P.L.L. 25/4

Remembrancer of Legal Affairs.

U.O. to P.W.D. No.6535, dated the 28th April 1952.

KAH/16-6.
4 c.

4394
1-3-52.

Submitted with reference to the R.D. note at pp. 7-9 ante. This is in connection with the question of the management of the Narlidhar Maharaj temple at Rajpipla. This was a private temple constructed by one Narjiwandas Morardas. After his death his widow, Bai Jadao, by a document dated 7th January 1924 entrusted the management of the temple to one Brahmachari Krishnanand Guru Raghawanand. That agreement also provided that the temple and the attached properties had been entrusted to his custody only for the life-time of Bai Jadao and that after her death one Doshi Bhagwanji Lavdas would look to the management. Later on by her application dt. 19-9-1925 Bai Jadao requested the Maharaja of Rajpipla to take over the management of the temple. She stated in her application that she was advancing in age and there was no one else in her family who could look after the temple. It appears from that petition that the temple was receiving two grants of Rs.110/- per year from the Rajpipla State. Then the Maharaja of Rajpipla by his order No.1733/25, dt. 3/11/1925, accorded sanction to the management of the temple by the Thander of Nandod on the conditions stated in the order. The Pujari appointed by Bai Jadao was continued. Subsequently by a will dt. 17-3-1946 Bai Jadao appointed Shri Motilal Chunilal and Chotalal Chunilal (the sons of her husband's sister) as her legal heirs to get her property after her death. On the strength of the will Chhotalal Chunilal has approached the Collector ~~xxx~~ with a request that the management of the Narlidhar temple may be handed over to him. Neither the Collector nor the R.D. propose to accede to his request. The will of 1946 does not

temple. In the circumstances the S.D. proposes to appoint a committee of 3 persons to advise the Mamlatdar on all matters connected with the management of the temple and to leave Shri Chotalal Chunilal to seek his remedy in a court of law. The papers are shown to the S.L.A. before orders as proposed above are issued.

S.L.A. 16/- P.M.L. 29/4.

KAM/16-6.
4 c.

Office of the R.L.A.

Since the temple is not one of the properties mentioned in Bai Jadao's will, it was presumably her intention that the same should be continued to be managed by the Rajpipla State, and not by Shri Chhotalal after her death. There appears, therefore, no objection to the course of action proposed by R.D.

Id/- P.M.L. 1/5

Remembrancer of Legal Affairs.

U.O. to R.D.No. 6015, dated the 2nd & May 1952.

EAM/1070.
4 c.

Office of the R.L.A.

The amount shown against each of the following persons is found due to Government on account of shortage in food grains:-

Shri Deepchand Jethmalani	Rs.2,317- 4- 0
Shri P.K. Bhatia.	314- 0- 9
Shir Mulchand Belaram	217- 5- 0

The question is what legal action should be taken against them for recovery of the amount due to Government. The R.H.D. considers that the only course is to file civil suits against them. R.L.A. is requested to advise.

2. From the letter of the Officer-in-charge dated 15-1-1952 addressed to the Director of Rehabilitation, it appears that sureties of Shri Jethmalani were also served with notices on 3-8-51. If the bond executed by sureties provides for recovery of the amount due to Government as an arrear of land revenue, steps should be taken against them for recovery under section 187 of the Bombay Land Revenue Code. If no such provision exists in the bond executed by the sureties, the only course open would be to institute a suit against Shri Jethmalani and his sureties or against the sureties, provided that their circumstances are such as to render it likely that satisfaction will be obtained of any decree that may be passed against them.

3. It appears that no surety bonds are executed on behalf of Shri P.K. Bhatia and Shri Mulchand Belaram. If so, the only feasible course open would be to file a suit against each of them provided their circumstances are such that it would be possible to satisfy the decree passed against them.

Id/- P.H.L. 6/5.
Remembrancer of Legal Affairs.

U.O. to R.H.D., No.7151, dated the 6th May 1952.

AAJ/16-6.

Office of the H.L.A.

It is stated that the pension paid by the Accountant General is debitable to the Government of Sind and is subject to recovery from the Sing Government in the usual course. When the name was changed in May 1946, it is not understood why Dr. B.S.Pararam did not take steps to have the Pension Payment Order issued by the Pakistan Government in his changed name, namely, "Pararam Bulchand". Since there is documentary and oral evidence to prove that "B.S.Pararam" and "Pararam Bulchand" are the same, and can be identified as such, the best course is to ignore his application dated 24-3-1952 requesting to prepare the Pension Payment Order in his new name "Pararam Bulchand" and ask him to address a letter to the Pakistan Government for issue of a revised authorisation in his changed name to the Accountant General, Bombay, and pending receipt of a revised authorisation from the Pakistan Government in his changed name, the Accountant General, Bombay, may issue final Pension Payment Order in his present name, namely, "B.S.Pararam" and obtain his signature to the bills in that name.

Id/- P.M.L. 31/5

Remembrancer of Legal Affairs.

U.R. to the office of A.G., No. 9152, dated the 2nd June 1952.

KAN/16-6.
4 6.

Office of the R.L.A.

The Constitution of the Provincial Council of Blindness is prescribed by G.R.G.D. No.1878/33 dated 14th February 1947. Item No.8 provides that there shall be six other members nominated by the patron, of whom one at least shall be a woman. From the D.O. letter dated 28th July 1947 of Private Secretary to H.E. the Governor addressed to the Secretary, Health and Local Government Department, it will be clear that Shri Potdar's name comes under the heading "Six other persons of whom one at least should be a woman". He is appointed by name in his personal capacity, and G.R. H. & L.G. Department No.1878/33 dated 1st October 1947 also makes that position clear. Consequently, though Shri Potdar, on account of his retirement is no longer Supervisor of the School for the Blind, Poona, since his nomination as a member was not ex-officio but in his personal capacity he would continue to be the member even after retirement. The view at 'B' at p.9 ante is correct.

Id/- P.M.L. 4/6

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 9463, dated the 6th June 1952.

KAM/16-6.
4 c.

H.L. No.4746 dt. 7-7-52

2. In H.L.A's opinion No. 19668, dated the 7th December 1951, it was pointed out to the E.D. that the right of those teachers resorting to Civil Courts for compensation for wrongful dismissal in accordance with the Rules in G.O., E.D. No. 3211 1951, dated the 6th November 1951 would not be affected even if Govt. pays them the compensation admissible to them under these Rules and that the Court may take into consideration the payment made by Govt. in assessing the damages. The E.D. has now requested the H.L.A. to advise whether this opinion implies that Government can pay compensation to the teachers concerned from the penalty imposed on the defaulting management by effecting cut in the Govt. grant and whether Govt. should pay compensation in such cases.

H.L.A. Sd/- P.J.L. 21/5

EAE/16-6.
4 c.

Office of the A.-G.

There would be no legal objection to Government's paying to the dismissed teachers the amount payable under the Rules in Government Resolution, Education Department, No.SS.R.1851, dated the 6th November 1951. However, the penalty imposed on a defaulting management would be by effecting a cut in Government grant whereby the amount so cut would lapse to Government and it would not be feasible to pay such amount to the teacher concerned x save with the sanction of the Legislature, as contemplated by article 204(3) of the Constitution. Such payment cannot be made by an executive act.

Id/- P.M.L. 23/5

Remembrancer of Legal Affairs.

U.R. to R.D., No.6723, dated the 24th May 1952.

KAN/16-6.
4 c.

LEGAL DEPARTMENT.

Section 13 of the Bombay Ministers' Salaries & Allowances Act, 1952, provides that subject to the rules or orders made by the State Government, a Minister and a Deputy Minister and the members of the family of the Minister or the Deputy Minister, as the case may be, who are residing with and dependent on him, shall be entitled free of charge, to accommodation in hospitals maintained by the State Government and to medical attendance and treatment. In the present case the Dy. Minister for C.A.D. intends to get his wife operated upon in the K.E.M. Hospital at Bombay through a well-known doctor. The K.E.M.Hospital in Bombay is not a hospital maintained by the State Government and it does not appear that under the section as it stands he will be entitled to get accommodation at that hospital at the cost of Government.

Sd/- J.R.D. 3/7

Additional Secretary to Govt.

U.R. to L.S.G. & F.&.D. (Home) No.SG-1, dated 3rd July 1952.

KAN/16-6.
4 c.

Office of the D.L.A.

Grant-in-aid to the Central Library.

The view taken by the P.D. is correct. Under the Trust Deed it is obligatory on Government to pay to the Society, subject to the sanction of the Legislature, a minimum grant of E.60,000/- for the purposes of the maintenance of the Library. The Legislature will be sanctioning a total amount of E.2,91,000/- and as the grant mentioned in the Trust Deed can be easily accommodated in this sanctioned amount, it would not be open to Government to subject it to any cut.

Id/- P.L.L. 20/6

Remembrancer of Legal Affairs.

U.S. to E.D., No.10584, dated the 20th June 1950.

KAH/15/6.
4 c.

No.13777.
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 1st August 1952.

C I R C U L A R.

It is noticed that Secretariat Departments are recently evolving the practice of referring to R.L.A. draft letters and resolutions for scrutiny without even stating the specific point or points on which R.L.A. is expected to advise. A reference to R.L.A. is no doubt necessary when decision of Government in a particular case must turn wholly or in part on the determination of a specific question of law of the Indian Union, including practice and procedure (cf. para. 104 of Secretariat Instructions) but R.L.A. cannot undertake to scrutinise letters and Resolutions which do not involve any legal points. The wording of such letters and Resolutions must be finalised by the Departments themselves; and such cases should not be referred to R.L.A. unless a legal point is involved which should, while making the reference, be specifically stated.

Sd/- P. L. LAD,

Remembrancer of Legal Affairs.

To

All Secretariat Departments (except the Separate Department).

KAR/16-6.
4 c.

Grounds of the R.A.

The presumption made by the Collector that the land in question has been sold by the Thakor does not appear to be correct. The proposal made by the Collector on that presumption does not seem to be in order. From the copy at p. 3 ante, to which the Collector has referred in his letter, it appears that it is not a document of sale but that it is a permission given by the Thakor of Varsoda to Jamalbhai Rasulbhai to build upon a certain land adjoining the house of the said Jamalbhai Rasulbhai. The permission appears to have been granted subject to the condition of payment of Nazarana of Rs. 15/- to the Thakor. The permission was granted on 20th August 1946. On this date the Thakor was competent to give such permission by virtue of Girasdari Office order No.32/1979 dated 20th July 1923 (Order No. 33 of Part V of the Baroda Girasdari Manual). However, under the said order it was incumbent upon the Thakor to see that by giving such permission land for purposes was not encroached upon or thereby public health was not affected.

It is thus not a case for setting aside a sale but for interfering with the permission granted by the Thakor under order No.33 of Part V of the Baroda Girasdari Manual. The Barkhali Assistant, Baroda, in his letter at p. 29 ante states that Part V of Baroda Girasdari Manual was repealed by the Baroda Government's notification No.4 of 1948-49 dated 30th April 1949 whereby the revenue powers exercised by Girasdars in respect of their watan lands were taken away and all watan lands were made subject to the provisions of the Baroda land revenue code and the rules thereunder.

Shri Jamalbhai Rasulbhai, to whom permission was

granted by the Thakor, has preferred an appeal to the Collector against the order made by the Prant Officer refusing permission to build on the land. From the Collector's letter at p. 1 ante it appears that the appeal is pending before the Collector and the question now is how to dispose of the appeal. The Collector has sought orders of Government in that behalf.

The provisions of Part V of the Giras Manual are not available for the disposal of the appeal as that Part stood repealed on 30th April 1949 i.e. during Baroda regime.

It appears that a Village Panchayat is established at Nikarwada. If the land in question forms part of a public road which vests in the panchayat under the Bombay Village Panchayats Act, it is for the panchayat to see whether the proposed construction on the land is an encroachment on the land vested in it. If the land does not vest in the panchayat, then the land cannot be said to be a part of a public road and the permission granted by the Thakor would stand.

The Collector may be asked to verify whether the land in question really forms part of a public road which vests in the panchayat or the Village and dispose of the appeal accordingly.

Sd/- ... 17/6

Superintendent of Legal Affairs.

U.O. to R.D., No.10226, dated the 20th June 1952.

RAM/Dir.
4.6.

L.D., R.I. No.54-Confl. dated 12-6-52.

Shri V.D. Usagare Foreman Supervisor of Tractor Unit No. 18, Ankleshwar is absconding since 29-5-1950 and has misappropriated Govt. Funds to the extent of Rs. 27,230-6-0 at p. 169 ante. The foreman Supervisor has been issuing receipts for ploughing chargeas received from the cultivators on plain papers to the extent of Rs. 27,230-6-0 instead of on the printed Govt. receipts as required by the Rules. The sums of ploughing charges were misappropriated by Shri V.D. Usagare to the extent of Rs. 27,230-6-0, as the Govt. monies x were not deposited in Govt. Treasury twice a week as required under the rules, out of which receipts amounting to Rs. 10,663-6-0 were scrutinised and found to be genuine. Ploughing work done to the extent of Rs. 8,974-13-0 against plain paper receipts scrutinised and found to be genuine and of Rs. 4505-9-0 against the plain paper receipts not scrutinised but the work carried out before the Govt. instructions contained in their G.L., dated 15-12-1950. To sum up the work remains to be done against the plain paper receipts scrutinised comes to Rs. 10,680-4-0. The work remains x to be done against the plaint paper receipts to the extent of Rs. 3,061-12-0 not scrutinized. For these details please see the detailed statement at p. 169 ante. It has not been possible to scrutinise the receipts amounting to Rs. 3,061-12-0, as the cultivators have not yet come forward to get the same verifed inspite of continuous efforts made by the Agricultural Deptt. and even after giving individual notices through Post as well as through the Local Paper "Partap" in two insertions advising the cultivators to

produce their receipts before the D.A.O., Eroad for verification and scrutiny by 15-1-1952. But the cultivators are not coming forward with their receipts. In the circumstances of this case, the Director of Agriculture proposes -

(i) that ploughing work should be undertaken against such of the receipts as are produced by for scrutiny before ———

(ii) that the remaining receipts which are not produced before the appointed date, may behold to be time-barred and claim on their account may be deemed to have been lapsed.

Sd/- 20-3.52.

D.S. (Civil)

KAR/16-6.
4 0.

Office of the R.L.A.

Proposal (i) is in order.

2. Proposal (ii) requires some consideration. Merely because the receipts were not produced in time for scrutiny, they cannot be held to have been time-barred or to have lapsed. It would be open to the holders of such receipts to seek relief in a Court of Law. Therefore, to lay down a general direction that receipts which are not produced in time for scrutiny need not be admitted either for payment or for work to be executed would not solve the difficulty. As far as possible the receipts may be scrutinised with a view to deciding whether they are genuine or not, and only such as do not appear genuine may be rejected.

Id/- P.M.L. 30/8

Remembrancer of Legal Affairs.

U.R. to A. & F.D. through F.D., No.575-Confl., dated the 4th Sept., 1952.

KAR/16-6.
4 c.

Office of the R.L.A.

The question raised for the R.L.A's consideration is whether the Government nominees on the Managing Committee of the Talukas Development Board appointed last year without specific mention of the period of nomination ceased to be members with the election of the new Managing Committee.

Under by-law 7(a) of the By-laws for Taluka/Peta Development Board one of the duties of the annual general meeting is to elect the Managing Committee and its office bearers required for the ensuing years. Under by-law 17 the Managing Committee which shall be elected by the annual general meeting shall hold office till another Managing Committee is elected. Under by-law 15 the ratio of non-official members to be elected and non-official members to be nominated by Government is fixed. It is clear from these provisions that the Managing Committee has to elect only the non-official members falling under columns 3 and 4 below note 1 to by-law 15, and the other non-official members falling under column 5 have to be nominated by Government. There is no provision in the by-laws as to the period of office of the nominated members; although the period of office for the elected non-official members is for one year. The period of office of the non-official members to be nominated by Government can be for one year only so that they may vacate office with the expiry of the period of office of the Managing Committee. Such limitation of period can also be derived from the intention of by-law 19-A. The view taken by Secretary, A. & F. D. is correct.

Id/- P.M.L. 1/10
Remembrancer of Legal Affairs.

KAN/16-6.
4 c.

U.O. to A. & F. D. No. 16272/A, dated the 3rd October 1962.

Office of the R.L.A.

The action of the Municipality is based on Rule 189 of the Sanand Municipal Rules and it is contended that the same is supported by the decision of the Civil Court in Civil Suit No.2294 of 1946. The Director of Education has, however, observed: "the Municipality has prescribed seperate service condition rules for the school employees generally on the lines of the Model Service Conditions Rules suggested by the Department for non-Government Secondary Schools. These rules for the Sanad Municipal High School have also been approved by the Educational Inspector as required. According to these rules a temporary teacher (i.e. having put in service of less than 2 years) is required to give only one month's notice before he leaves his service". These Rules which are said to be approved by the Educational Inspector are not included in these papers. It is also not known whether they have been brought into force by the Municipality and if so with effect from what date. The Education Department may ascertain whether these Rules were in force when Shri Vora tendered his resignation and if it be found that they were in force, being special Rules governing service conditions of employees in the High School they will apply to the case of Shri Vora and the Municipality cannot fall back upon the general Rules applicable to other Municipal servants to justify its action.

Id/- P.M.L. 7/10

Remembrancer of Legal Affairs.

U.R. to E.D. No.16509/A, dated the 8th October 1952.

KAN/16-6.
4 c.

Office of the R.L.A.

Government of India may be apprised of all the facts and informed that subject to the terms of any agreement that may have been made between India and Pakistan relating to repatriation, the Government of Bombay is inclined to the view that the prisoner should be allowed to complete here his ~~term~~ term of imprisonment, as the offence for which the sentence is awarded has apparently no connection with military operations.

Id/- P.M.L. 8/10.

Remembrancer of Legal Affairs.

U.O. to P. & G.D., No. 16577/A, dated the 9th October 1952.

KAN/16-6.
4 c.

L.D.&L.I.No. 21092/S.9.1953.

Submitted.

Please see the letter from the Registrar, High Court, at pp. 1-4x of the C/S. It is proposed by the High Court to frame Rules for appointing licensed petition writers for Criminal Courts and to fix fees to be charged by them. Provisions for petition writers exist for Civil Courts and they are contained in paragraph 33 of Chapter XIV of the Civil Manual. No such Rules, however, exist in respect of Criminal Courts and, therefore, High Court proposes to frame them in exercise of its powers of superintendence and control. The District Judges, who have been consulted by the High Court, are all in favour of such Rules. The High Court has now requested Govt. to state whether it has any objection to the framing of such Rules. H.D. proposes to convey its approval; but L.D. is shown the papers before the High Court is addressed in the matter.

Sd/-

EAH/16-6.
4 c.

Office of the R.L.As

There should ordinarily be no objection to the framing of the proposed rules and in fact such Rules are necessary in the interest of the public and the administration of Justice. The proposed Rules are, however, not to contain any penalty clause for breach of the Rules and in the circumstances it is doubtful how far they can be effectively enforced. It may be noted that the High Court had similar powers of Superintendence over the Civil Court but in 1900 the Legislature thought it expedient to enact section 41A of the Bombay Civil Courts Act, 1869 and to empower the High Court to frame rules for petition writers in the Subordinate Civil Courts. Similar legislative provision appears necessary for making Rules governing petition writers in Criminal Courts. Recently Government had to consider the question of prescribing qualifications etc. for bond-writers; and in his opinion dated the 25th April 1952, the Advocate General advised that substantive legislation would be necessary for the purpose. Home Department may, therefore, consider whether such legislation should not be promoted for the purpose before the High Court frames Rules in the matter.

Id/- P.M.L. 9/10

Remembrancer of Legal Affairs.

U.R. to H.D. No. 16301/A, dated the 11th October 1952.

KAH/16-6.
4 6.

Office of the R.A.G.

Baroda State (Application of Laws) Order clauses 3 & 5.

Baroda Account Code. section 287.

Rules 285 to 293 of the Baroda Account Code provided for disposal of deposits made into the Civil Courts of the State and correspond to the Rules 25 and 26 in Chapter XXII in the Civil Manual Vol. I pp.245-246 made by the Bombay High Court under section 128(f) of the Code of Civil Procedure 1908. Rules 285 of the Baroda Rules provided for notifying on certain dates the deposits lying in the Courts as have become liable to be returned to the persons concerned. Rule 286 provided that claims to such deposits shall be made within three months of such notification. Rule 287, subrule (1) provided that in case of such failure to claim the amount of the deposit, within the time specified it shall be credited to Government. Sub-rule (4) thereof provided that if such amount exceeds Rs.10/- and such claim is made within ten years from the date of so crediting to Government, it shall be returned to the claimant after deducting a sum calculated at three per cent per annum on the amount of the deposit and that after the expiry often years from the date it is credited to Government, nobody could claim it.

3. It appears that on 20-4-1940 a sum of Rs.193-11-0 standing in the name of one Pandurang N. Jambekar was credited to Government account under rule 286 of the Baroda Account Code and ordinarily on 20th April 1950 any rights in respect of that deposit would have been extinguished under sub-rule (4) of rule 287 of the Code. However, before the deposit would have lapsed to Government the Baroda State merged with this State and under clause 3 read with clause 5 of the Baroda State

(Application of Laws) Order, 1949, which came into force on 30th July 1949, the Code of Civil Procedure, 1908, together with the Rules made thereunder were extended to the Baroda State and the corresponding law in force there was repealed. Consequently, after that date the the deposit in question came to be governed by rule 26 in the Chapter XXII of the Civil Manual, Vol. I made by the High Court under section 128(f) of the Code. Under the said rule 26, as has been rightly pointed out by the District Judge, Baroda, no time limit has been laid down for claiming the refund of the court deposit, and the amount in question will have to be refunded to Shri P.B. Jambekar who has obtained the succession certificate in respect of that amount. However, since immediately before the 30th July 1949 Shri Jambekar could have claimed the amount subject to the deductions specified in rule 267(4) of the Baroda Rules, the amount should be refunded to him now after the requisite deductions are made (cf. clause 5(iii) of the Baroda State (Application of Laws) Order, 1949).

Sd/- P.L.L. 13/10

Remembrancer of Legal Affairs.

U.R. to H.D., No. 17063/A, dated the 15th October 1952.

KAM/16-6.
4 c.

Office of the R...ts

As suggested by the Remembrancer of Legal Affairs in his last opinion No.853-Confl., dated the 27th August 1952, the Revenue Department has made further enquires and the Collector of Kolaba has reported: "delegated powers do not appear to be either conditional or absolute but are obviously concurrent. I do not think that it can be held that the authority to revise any orders passed in pursuance of these powers". The Revenue Department has forwarded the report of the Collector to the Remembrancer of Legal Affairs for consideration.

2. It is true that "to delegate to another is not to denude yourself" and the delegating authority has no doubt concurrent powers. But the delegate having once exercised the delegated powers, it would not be open to the delegating authority to revise the order passed by the delegate unless the delegation reserved to the delegating authority the power to revise. The delegation being absolute in the present case and the Prant Officer having exercised the power, it would not be competant for the Collector to revise the Prant Officer's order. The view taken by the Collector is not correct.

Id/- P.M.L. 24/10

Remembrancer of Legal Affairs.

U.R. to R.D., No. 1131/A-Confl., datedthe 24th October 1952.

KAB/16-6.
4 c.

L.D.R.I.No.28091 dt. 20-11-52.

Submitted with reference to the note of the P.W.D. at p. 13 ante.

The facts material to this reference at p. 4 ante may be summarised as under:-

8 slabs of pig lead costing Rs. 602-2-0 were stolen on or about 4-12-1950 from among 100-slabs of pig lead lying in 2 heaps of 50 each in the open space of the Nasik Water Works Compound. This theft was reported to the Police for investigation. During the course of investigation property worth Rs.100/- was recovered on 2-1-1951. The remaining property could not be recovered, as it was completely melted and used in Ghoti Iron Works. Accused A Gafar Nur Mohamad Muslim who had committed this offence was arrested on 3-1-51 at Nasik and was challenged in the court of special R.M. F.C. Nasik on 7-1-51. He was convicted under sec. 379, I.P.C. on 13-2-51 and was sentenced to 6 months R.I. by the said Magistrate. The question is of possibilities of recovering the cost of the stolen lead, melted and used in ghothi ironw works, Nasik.

R.L.A. Id/- P.M.L. 27/11

KAN/16-6.
4 c.

Office of the R.L.A.

Although the melted slabs do not cease to be stolen property, the Ghoti Iron Works cannot be held liable criminally unless it could be proved that they were received dishonestly. It is not clear how the Ghoti Iron Works obtained or came into possession of this stolen property. Even as bona fide purchasers for value, they acquire no better title to it than the seller had (vide section 27 of Sale of Goods Act). It, therefore, it is proved that the property they obtained was the stolen property, that is to say, if the identity of the property is proved, the Ghoti Iron Works would be civilly liable to restore the property or its value to the true owner.

Sd/- P.M.L. 4/12

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 20374/A dated the 5th December 1962.

KAH/16-6.
4 c.

Office of the R.L.A.

Consular agreement with the U.S.A.

The suggestion to incorporate a stipulation that an employee in the Consular office should not be an obnoxious person is a good one. The stipulation should not, however, be restricted to nationals of India (the receiving State) or of a third State; but should apply to nationals of the sending State also. It may be noted that by clause (3) of Article 4, the Receiving State is entitled to refuse to grant exequatur or other authorization to the Consular officer; but there is no provision whereby an objection can be taken to the appointment of a Consular employee. In the circumstances, it appears desirable to have such a stipulation whereby employment and even continuance in service of obnoxious elements can be prohibited.

2. There is no special reason for making the rights conferred by Article 8 subject to the Local Municipal Regulations. The right to display National flag and Arm has been well recognised in International law; and so in general is the practice and so necessary is it, that i may be said to have a basis in International law (vide Consular Privileges and Immunities by Irvin Stewart, p.60 There would be no objection to concede this right without making it subject to municipal regulations, if a reciprocal right is conceded by U.S. to India.

3. The suggested reference to detention in Article 11(4) does not appear appropriate. In the first place immunity of Consular Officer from ~~any~~ arrest except for an offence which is punishable with imprisonment of one year or more is recognised in Article 11(1)(b). Moreover, detention of a Consul under other provision like Preventive Detention Act is unthinkable. If the Consul

indulges in undesirable activities, the proper course would be to cancel his recognition and to send him back if he is a foreigner. No question of immunity will arise in case of Indian nationals.

4. The position regarding taxation appears to cause difficulties in repsect of sales tax and entertainment tax. These taxes are collected through third parties and it is difficult to grant exemption except by way of refund. The difficulty is real; but it may be obviated by providing that the exemption from taxation shall not extend to such indirect taxes. Attention in this respect is invited to the last sentence of Article 13(1)(b). It may be possible to incorporate a similar proviso in other articles where a difficulty arises in giving effect to exemption.

5. Coming to the provisions which have been specially referred to L.D. for remarks, it appears that there would be no objection to agreeing to these articles. Section 57 of the Administrator-General's Act, 1913, provides for administration by the Consular Officer in case of death in certain circumstances and thus administration of estate by Consul is recognised by Indian Law. The provisions of Article 19 and 20 provide for transfer etc. of property. These provisions will serve to obviate many difficulties and therefore there would be no objection to agreeing to these Articles.

Id/- P.N.L. 22/12

Remembrancer of Legal Affairs.

U.O. to P. & S.D. No.21722/A, dated the 23rd December 1952

KAM/18-6.
4 c.

Office of the R.L.A.

With a view to discouraging the use of guides, etc., in schools, Govt. has asked all publishers of text books to give an undertaking not to publish or sell guides, annotations, glossaries and similar other books in respect of text books published by them or by others. The Managing Agents, Teachers' Ideal Publishing House, Ltd., Poona, have represented to the Director of Education that they may be allowed to sell the stock of guide books already in hand as otherwise they would sustain a heavy loss and in case the Director of Education does not comply with their request, they would approach the court for relief. The R.L.A. is requested to advise whether the suit if filed would be defensible.

The undertaking proposed to be taken from publishers would be prospective and relate to the future publication of guides, annotations, etc., in respect of text books published by them. Consequently, the Managing Agents, Teachers' Ideal Publishing House, Ltd., cannot be prohibited from selling guides, annotations, etc., which have been already published in respect of the text books before the undertaking is given by them. They will, therefore, have to be allowed to sell those guides, annotations, etc., published by them before the undertaking is given by them. The contention of the Managing Agents of the Company is not without substance. They are ready to give an undertaking in respect of future publications, which may be accepted by the Education Department.

KAR/18-6.
4 c.

Id/- P.B.L. 20/11

Remembrancer of Legal Affairs.

U.R. to E.D. No.19404/A, dated the 20th November 1952.

D. S.(Civil) Id/- R.T.K. 20/11

R.L.A.